

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-080877
	:	TRIAL NO. B-0710273
Plaintiff-Appellee,	:	
	:	<i>DECISION.</i>
vs.	:	
SYLVESTER LAWSON, II,	:	
Defendant-Appellant.	:	

Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: September 3, 2010

Joseph T. Deters, Hamilton County Prosecuting Attorney, and *Scott M. Heenan*, Assistant Prosecuting Attorney, for Plaintiff-Appellee,

Robertson, Geiser & Longano, LLC, and *Bernadette M. Longano*, for Defendant-Appellant.

Please note: This case has been removed from the accelerated calendar.

Per Curiam.

{¶1} In August 2008, following the entry of a guilty plea, defendant-appellant Sylvester Lawson, II, was convicted of rape,¹ kidnapping,² and an accompanying gun specification. The trial court imposed an agreed prison term of six years each for the rape and kidnapping and three years for the firearm specification, and it ordered that the sentences be served consecutively for an aggregate prison term of 15 years. Lawson appealed his conviction, and appellate counsel was appointed. Lawson's appellate counsel filed a no-error brief, and this court affirmed Lawson's convictions and sentences.³ A few months later, Lawson filed an application to reopen his direct appeal under App.R. 26(B), and we granted the application.

{¶2} In the reopened appeal, Lawson brings forth four assignments of error. For the following reasons, we affirm his convictions and sentences.

{¶3} In his first assignment of error, Lawson argues that the trial court erred when it convicted and sentenced him for both rape and kidnapping in violation of R.C. 2941.25, Ohio's multiple-count statute.

{¶4} Under R.C. 2941.25, if a defendant's conduct results in allied offenses of similar import, the defendant may only be convicted of one of the offenses.⁴ But if the defendant commits each offense separately or with a separate animus, then convictions may be entered for both offenses.⁵

¹ R.C. 2907.02(A)(2).

² R.C. 2905.01(A)(4).

³ See *State v. Lawson* (June 17, 2009), 1st Dist. No. C-080877.

⁴ R.C. 2941.25(A).

⁵ R.C. 2941.25(B).

{¶5} The Ohio Supreme Court has held that rape and kidnapping were allied offenses of similar import.⁶ But the court has established guidelines to determine whether kidnapping and rape were committed with a separate animus so as to permit separate punishments under R.C. 2941.25(B). In *State v. Logan*, the court held that “[w]here the restraint or movement of the victim is merely incidental to a separate underlying crime, there exists no separate animus sufficient to sustain separate convictions; however, where the restraint is prolonged, the confinement is secretive, or the movement is substantial so as to demonstrate a significance independent of the other offense, there exists a separate animus as to each offense sufficient to support separate convictions.”⁷ Additionally, the *Logan* court recognized that where the asportation or restraint “subjects the victim to a substantial increase in risk of harm separate and apart from * * * the underlying crime, there exists a separate animus.”⁸

{¶6} After a thorough review of the record, we hold in this case that the rape and kidnapping offenses were committed with a separate animus. The record demonstrates that Lawson and an accomplice had driven up to the victim late at night while she was retrieving a bag from her aunt’s car. Lawson pointed a gun at her and demanded money. After the victim stated that she did not have any money, Lawson forced her into the back seat of the car. Lawson also entered the back seat and ordered the victim to disrobe. At gunpoint, Lawson forced the victim to perform fellatio while Lawson’s accomplice drove the car around town. The victim was later abandoned not far from where she had been abducted.

⁶ See *State v. Donald* (1979), 57 Ohio St.2d 73, 74-75, 386 N.E.2d 1341, syllabus; accord *State v. Adams*, 103 Ohio St.3d 508, 2004-Ohio-5845, 817 N.E.2d 29, ¶89-95.

⁷ *State v. Logan* (1979), 60 Ohio St.2d 126, 397 N.E.2d 1345, syllabus.

⁸ *Id.*

{¶7} We conclude that Lawson’s act of sexually attacking the victim while in a moving vehicle subjected her to a substantial increase in the risk of harm she faced. Further, the fact that the victim was forced into a car and driven away from where she had been abducted demonstrated substantial movement of the victim that was not merely incidental to the rape. Accordingly, we hold that there existed a separate animus for each offense sufficient to support separate convictions.

{¶8} We note that in our decision granting Lawson’s application to reopen his appeal, we concluded that the rape and kidnapping were allied offenses of similar import because the record could not “be said to demonstrate a spatial or temporal separation between the two offenses or a separate animus as to each.” But after closely reexamining the record, we have determined that this initial conclusion was wrong.

{¶9} Accordingly, the first assignment of error is overruled.

{¶10} In his second assignment of error, Lawson contends that his agreed sentence was not “authorized by law” and was thus subject to appellate review under R.C. 2953.08(D)(1). We disagree.

{¶11} The Ohio Supreme Court has held that a sentence is “authorized by law” and is not appealable within the meaning of R.C. 2953.08(D) if it comported with all mandatory sentencing provisions.⁹

{¶12} We hold that Lawson’s aggregate sentence of 15 years’ incarceration was “authorized by law” because it comported with the appropriate sentencing provisions. Each prison term fell within the appropriate statutory range for the corresponding offense, and Lawson was properly notified of postrelease control.

⁹ *State v. Underwood*, 124 Ohio St.3d 365, 2010-Ohio-1, 922 N.E.2d 923, ¶20.

Further, based on our resolution of the first assignment of error, Lawson was not unlawfully sentenced on allied offenses of similar import.

{¶13} Therefore, the second assignment of error is overruled.

{¶14} In Lawson's third and fourth assignments of error, he essentially contends that his guilty pleas were rendered involuntary when the trial court failed to properly inform him of the possible maximum prison term he was facing, as well as failing to inform him of his right to compel and summon witnesses on his behalf. These assignments of error are not well taken.

{¶15} The record demonstrates that the trial court informed Lawson that he was facing a total of 23 years in prison: 10 years for rape, 10 years for kidnapping, and a mandatory three-year prison term for the gun specification. Further, a review of the plea hearing demonstrates that the trial court informed Lawson that he was giving up his right "to confront witnesses against you" and "to have subpoenaed witnesses to testify in your favor." Lawson stated on the record that he understood the rights he was waiving by pleading guilty.

{¶16} Because the trial court complied with Crim.R. 11(C), Lawson cannot demonstrate that his guilty pleas were made involuntarily. Accordingly, the third and fourth assignments of error are overruled.

{¶17} In his final assignment of error, Lawson maintains that his trial counsel was ineffective for (1) failing to perform a rudimentary investigation of facts provided to him by Lawson, (2) failing to investigate and interview promising witnesses, (3) failing to advise Lawson of his constitutional right to compel witnesses to appear and testify, and (4) encouraging Lawson to plead guilty to allied offenses of similar import. This assignment of error is not well taken.

{¶18} To sustain a claim for ineffective assistance of counsel, a defendant must demonstrate that counsel's performance was deficient and that the deficient performance prejudiced the defense.¹⁰

{¶19} We hold that Lawson's trial counsel was not ineffective. Lawson has failed to demonstrate that his trial counsel's performance was deficient in view of our holdings that Lawson was properly informed of his right to compel witnesses to appear and testify, and that the rape and kidnapping were committed with a separate animus to justify separate sentences. Further, we can find no evidence in the record, nor can Lawson point to any, that demonstrates that his trial counsel failed to investigate the facts or failed to investigate and interview Lawson's witnesses. In fact, Lawson's trial counsel subpoenaed several witnesses on Lawson's behalf.

{¶20} Because Lawson's trial counsel's performance was not deficient, we overrule the fifth assignment of error.

{¶21} Therefore, the judgment of the trial court is affirmed.

Judgment affirmed.

CUNNINGHAM, P.J., HILDEBRANDT and HENDON, JJ.

Please Note:

The court has recorded its own entry on the date of the release of this decision.

¹⁰ *Strickland v. Washington* (1984), 466 U.S. 668, 687, 104 S.Ct. 2052; *State v. McCray*, 1st Dist. No. C-080860, 2009-Ohio-4390.